

### **REMARKS**

This is a full and timely submission to accompany a Request for Continued Examination and a response to the final Office Action mailed December 13, 2007. Applicants have also filed a petition for a one month extension of time pursuant to 37 CFR 1.136(a)(1). After grant of the accompanying Request for Continued Examination and the entry of the present amendments, claims 15-17, 19-20, and 29-32, 34, 36-37, and 42-45 will be pending in this application. The Office Action allowed claims 19, 20 and 31 and rejected claims 15, 16, 28, and 29. Claims 17, 32-33, 36, 37, 38, 30, 34-35, 39, 40, and 41 were objected to. Claims 15-17, 29-30, 32, 34, and 36-37 have been amended to further clarify the invention claimed in claims 15-17, 29-30, 32, 34, and 36-37. Claims 28, 33, 35, and 38-41 have been cancelled. New claims 42-45 have been added and are supported by the previous claims and the specification pages 8-11. No new matter has been added. Consideration of the enclosed amendments and remarks is requested in combination with the accompanying Request for Continued Examination, and Applicants respectfully submit that the claims are now in condition for allowance and request that all rejections be withdrawn.

#### **I. REJECTION OF CLAIMS 15-19, 28-30, AND 32-35 UNDER § 112**

The Office Action rejected claims 16 and 29 under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Specifically, the Office Action stated that the “function of the network hub server in the distributed network management system is not clear. It is not clear what information is obtained by the hub server from the

remote network server while the hub server is monitoring the remote network server. It does not appear that the hub server has any use of the weighted average computed by the means associated with the network server.”

Claim 16 has been amended to recite “a selected network hub server for communication with a plurality of remote network servers[.]” The role of the network hub server, therefore, is to communicate with multiple remote network servers. Additionally, the network hub server may take over the responsibilities of the remote network hub server if the remote network hub server is inoperable. “[I]f both the primary and secondary remotes are inoperational, all active hubs assume monitoring of the remote network.” (Specification, page 6, line 30.) “In this way, a multi-level distributed system architecture can be achieved.” (Specification, page 7, lines 22-23.)

Additionally, Applicants respectfully submit that the rejection stating that the hub server does not make use of the weighted average is improper. Claim 16 is a system claim, and a structural relationship is recited between the network hub server and the remote network servers. The claimed use of the weighted average is by the remote network servers.

The Office Action stated that, “[c]laim 29 has similar defects.” Claim 29 has been similarly amended, and the arguments with respect to claim 16 are equally applicable to claim 29.

For the reasons set forth above, applicants respectfully submit that claims 16 and 29, as amended, are now in condition for allowance and request that the rejections be withdrawn.

## II. REJECTION OF CLAIMS 15-16 AND 28-29 UNDER § 103(a)

The Office Action rejected claims 15 and 16 and claims 28 and 29 as unpatentable over Majkowski, U.S. Patent No. 6,564,336 (“*Majkowski*”). The Office Action states that “the rejections have been set forth in the last Office action. The details are incorporated herein by reference.” In response to Applicants’ arguments set forth in the response to the earlier rejection, the Office Action states,

[a]s to computing a weighted average, it is noted that the claims do not recite any usefulness of the average in the distributed management system. Applicants further fail to provide any argument as to why the claims are patentable[sic] distinct over the reference, that is why the average is an improvement in the distributed management system? In the absent[sic] of the argument, the weighted average is nothing but only one of the many applications which the device is able to execute.

In addition to the response filed September 27, 2007, Applicants respectfully state that claims 16, 15, and 29, as amended, are patentably distinct from *Majkowski*. As the prior Office Action noted, “*Majkowski* does not disclose using responses received from the network device to compute a weighted average over a plurality of time period[sic].” (Office Action mailed 06/29/2007, page 4.) The prior Office Action stated that it would have been obvious to use a weighted average algorithm, and the instant Action merely states only that the device is *capable of* performing the step of computing a weighted average. That the monitoring system of *Majkowski* would be *able to execute* the weighted average computation does not make the weighted average, or its use as recited in claims 15, 16, and 29, as amended, obvious.

Claim 16, as amended, recites, “the weighted average is a representation of the state of said network device[,]” which is stored by the remote network servers. Therefore, the

usefulness of the weighted average is as a representation of the state of a network device. Storage by the remote network servers allows each to track the state of all devices on the network. It would not have been obvious to one of reasonable skill in the art to expand the system of *Majkowski* to compute and store a weighted average because there would be no use for such an average. As stated in the prior response, the monitoring of *Majkowski* is merely directed to transferring a connection to an alternate, secondary storage database, which is a back up for the primary database in the event of a failure. There is no need to monitor the status of a plurality of network devices, as recited in the claims because the invention of *Majkowski* merely determines whether the primary server is active or not.

Claims 15, 16, and 29, as amended, are patentably distinct from *Majkowski*. Claim 15 has been amended to correspond to the amendments of claims 16 and 29, respectively, and is amended as dependent from claim 16. *Majkowski* only provides for the transfer of data between two databases, only one of which is active at a time. The weighted average recited by the Applicants would have no use in *Majkowski* because it simply monitors “on” or “off” for one network element. The expansion of *Majkowski*, therefore, was improper and does not support the rejection.

Dependent claims 17, 30, 32, 34, and 36-37 have been amended to clarify the invention claimed by claims 17, 30, 32, 34, and 36-37. The Applicants note with appreciation the allowability of claims 17, 30, and 32-41 if rewritten in independent form. Applicants respectfully submit that the claims, as amended, and for at least the reasons set forth above with regard to claims 15, 16, and 29, are currently in condition for allowance.

For the reasons stated above, Applications respectfully submit that all claims are now in condition for allowance and request withdrawal of the rejection after the Request for Continued Examination has been entered.

**CONCLUSION**

Claims 15-17, 19-20 and 28-43 are pending, and claims 15-17, 28-30, 32, 34, 36-37, and 39-40 have been amended to further clarify the invention claimed by claims 15-17, 28-30, and 32, 34, and 36-37. Claims 33, 35, and 38-41 have been cancelled. Claims 42-45 have been added, and no new matter has been included. It is respectfully submitted, that all claims are now in condition for allowance. The Examiner is invited and encouraged to contact the undersigned attorney of record at (404) 745-2434 if such contact will facilitate a Notice of Allowance. If any additional fees are due, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,

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